

REMARKS

Rejections under 35 USC §103

Claims 1-10, 12-20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (US 6324703 B1) in view of Chung et al. (KR 2002069596). Claim 11 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (US 6324703 B1) and Chung et al. (KR 2002069596) further in view of Lennon et al. (US 2003/0165451). The rejections are respectfully traversed.

Chen et al (US 6,324,703) relates to tear resistant insulating gel composition for extreme cold weather. The insulating gels are used in forming articles for the human body such as boots, face masks, gloves, and full body wear. See col. 2, lines 36-38 and col. 4 lines 1-3. Thus, Chen is clearly non-analogous art. Applicant's claimed invention is directed towards a cosmetic complex that is water resistant. The Chen reference is not reasonably pertinent to the present invention. A skilled worker in the field of cosmetic compositions for the skin would not logically look towards a teaching directed to insulating gels for use in protective clothing.

Furthermore, as the Examiner correctly notes on page 6 of the Office Action, Chen fails to teach the specific polyester and amount of water-repellent crosslinked polyester (ii), water-absorbing powders (iii), thickening agents (iv), organic solvents (v), cross-linked silicone polymer and the amount of the climaproof complex in the cosmetic. Furthermore, the reference fails to teach the specific size of the water-absorbing polymers.

On page 5 of the Office Action, the Examiner states :

"The hydrophilic patches are held in place by the gel on one side and in direct contact with the skin" (col.6 lines 3855), meeting limitation (iii) of claim 1 and 16 in part."

Applicants respectfully disagree with the assertion that limitation (iii) is met. Chen et al. discloses water-absorbing patches that are inserted through slits of a mask or other part of a gel composite body suite. See column 6 at lines 30-32. These patches are discrete pieces of cotton or other water absorbing material. They are not

even part of Chen's gel composite. Furthermore, they are not part of a cosmetic complex that is water resistant.

On page 8 of the Office Action the Examiner alleges:

"the determination of optimal or workable proportions of the ingredients and size of the water-absorbing polymers by routine experimentation is obvious. One having ordinary skill in the art would have been motivated to do this to obtain the desired balance of better tensile, better tear better fatigue resistant and better feel gel properties."

However, a skilled worker the cosmetic art would not be concerned or motivated by the tensile strength or tear-resistance of an insulating gel for protective clothing. These are simply not factors considered in a cosmetic composition for application to the skin. Furthermore, the Chen reference does not provide a skilled worker with amounts of any components, much less the amounts of five components that work together to form a cosmetic complex that is water resistant and contains essentially no emulsifier.

As the Examiner notes Chen does not meet the limitations of (ii) (i.e., a cross-linked polyester consisting of a polyol and a dicarbonic acid) and Chung et al. (KR2069596), which is also non-analogous art, does not cure this deficiency.

The Chung et al. (KR2069596) reference is also in an entirely different field (i.e., nonwoven fabric) from that of applicant's claimed invention (i.e., cosmetic complex that is water resistant). The reference is not reasonably pertinent to the present invention and would not logically have commended itself to the inventor's attention. The function of the polyester of Chung et al. is to provide thermal adhesive properties to bind fibers together. A skilled worker in the art of cosmetic compositions would never consider incorporating a thermal adhesive (used to bind fibers) into a cosmetic composition for the skin. Thermal adhesion or fiber binding are simply not factors considered in formulating cosmetic compositions which are water resistant.

Furthermore, as previously discussed, and as noted on page 4, of the specification, "the gelled oil composition and the water-repellent cross-linked polyester are complementary

in their properties...the overall effect of which exceeds the individual effect thus providing a synergistic effectiveness.” Neither Chen et al. nor Chung et al. recognize this synergistic effect. Compare Example 7 which contains component (i) and (ii) and shows a better water resistance to Example 9 which contains a complex comprising adipic acid/diethyleneglycol/glycerine-copolymer. In addition, compare example 9 with example 11.

With respect to claim 11, the Examiner further relies upon Lennon. This rejection is untenable at least for the reasons discussed above for the primary reference.

Taken together the references would in no way lead one skilled in the art to arrive at the complex of the present invention. Thus, it is respectfully requested that the rejections under 35 USC §103 be withdrawn.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

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